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INTERSTATE R. CO. *v.* ROBERTS, Clerk.

Sept. 16, 1920.

[105 S. E. 463]

1. Taxtion (§ 103*)—Instrument Held Not "Deed" Under Tax Statute.—An instrument attached to a sale of rolling stock, although technically a "deed," because in writing, signed, sealed, and delivered, held not taxable as such under Tax Bill (Code 1919, p. 3087) § 13.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Deed.]

2. Taxation (§ 103*)—Instrument Held Not Taxable as Mortgage or Deed of Trust.—An instrument which was attached to an instrument constituting a sale of rolling stock held not to be regarded as a mortgage or deed of trust and taxable accordingly, although, when read with the sale agreement, it does secure a debt.

3. Mortgages (§ 1*)—Essence of Mortgage or Trust Deed Stated.—The essence of a mortgage or trust deed is that it creates a lien on property to secure a debt.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 11]

4. Taxation (§ 103*)—Instruments Filed by Railway Held Together to Constitute "Contract or Agreement Relating to Sale of Rolling Stock or Equipment.—Two papers filed by railroad with the clerk of the superior court for recordation, a so-called lease and an instrument providing security, held together to constitute a "contract or agreement relating to the sale of rolling stock or equipment" within Tax Bill (Code 1919, p. 3087) § 13, the tax being determined upon the amount contracted for.

5. Taxation (§ 58*)—Doubts to Be Resolved in Favor of the Taxpayer.—Doubts as to the extent of taxability of property must be resolved in favor of the taxpayer.

Error to Circuit Court, Wise County.

Suit by Roberts, Clerk, against the Interstate Railroad Company. Judgment for plaintiff, and defendant brings error. Reversed and rendered.

Bullitt & Chalkley, of Big Stone Gap, for plaintiff in error.

Jno. R. Saunders, Atty. Gen., *J. D. Hank, Jr.*, Asst. Atty. Gen., *Leon M. Bazile*, of Richmond, and *E. M. Fulton*, of Wise, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.